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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,840	03/01/2006	Joachim Schmitt	SCHM3001/REF	8834
23364 7590 12/18/2008 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176				
EXAMINER				
SWARTZ, RODNEY P				
ART UNIT		PAPER NUMBER		
1645				
MAIL DATE		DELIVERY MODE		
12/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,840

Applicant(s)

SCHMITT ET AL.

Examiner

Rodney P. Swartz, Ph.D.

Art Unit

1645

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2008, 21 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-35, 38-43, 45, 46 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-30, 32-35, 38-41, 45, 46 and 48 is/are allowed.
- 6) ☒ Claim(s) 31, 42 and 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.
2. Applicant's amendment, filed on 21 July 2008 has been entered. Claims 36, 44 and 47 have been cancelled. Claims 27-35, 37-39, 45 and 48 have been amended.
3. Applicant's submission filed on 21 October 2008 has been entered. Claims 33, 34 and 45 have been amended. Claim 37 has been canceled.
4. Claims 27-35, 38-43, 45, 46 and 48 are pending and under consideration.

Rejections and Objections Moot or Withdrawn

5. The objection to claim 37 is moot in light of the cancellation of the claim.
6. The rejection of claims 44 and 47 under 35 U.S.C. 112, second paragraph, as being indefinite for "derived" and "sequence of", is moot in light of the cancellation of the claims.
7. The rejection of claims 44 and 47 under 35 U.S.C. 112, second paragraph, as being indefinite for identity of encoded polypeptide, is moot in light of the cancellation of the claims.
8. The rejection of claim 36 under 35 U.S.C. 112, second paragraph, as being indefinite, is moot in light of the cancellation of the claim.
9. The rejection of claim 44 under 35 U.S.C. 112, second paragraph, as being indefinite, is moot in light of the cancellation of the claim.

10. The rejection of claim 47 under 35 U.S.C. 112, second paragraph, as being indefinite, is moot in light of the cancellation of the claim.
11. The rejection of claim 38 under 35 U.S.C. 101, non-statutory subject matter, is withdrawn in light of the amendment of the claim.
12. The objection to claim 32 is withdrawn in light of the amendment of the claim.
13. The objection to claim 45 is withdrawn in light of the amendment of the claim.
14. The rejection of claims 27-31, 35, 42 and 43 under 35 U.S.C. 112, second paragraph, as being indefinite for "derived" and "sequence of", is withdrawn in light of the amendment of the claims.
15. The rejection of claims 29 and 30 under 35 U.S.C. 112, second paragraph, as being indefinite for "stringent conditions" is withdrawn in light of the amendment of the claims.
16. The rejection of claim 33 under 35 U.S.C. 112, second paragraph, insufficient antecedent basis for "TS1", is withdrawn in light of the amendments of the claim.
17. The rejection of claim 34 under 35 U.S.C. 112, second paragraph, insufficient antecedent basis for "TS2", is withdrawn in light of the amendments of the claim.
18. The rejection of claims 33 and 34 under 35 U.S.C. 112, second paragraph, as being indefinite for claimed protein or DNA, is withdrawn in light of the amendments of the claims.
19. The rejection of claim 35 under 35 U.S.C. 112, second paragraph, as being indefinite for claimed protein and/or DNA, is withdrawn in light of the amendment of the claim.
20. The rejection of claims 45 and 46 under 35 U.S.C. 112, second paragraph, as being indefinite for "with the help of", is withdrawn in light of the amendments of the claim.
21. The rejection of claim 48 under 35 U.S.C. 112, second paragraph, as being indefinite for "an effective amount", is withdrawn in light of the amendments of the claim.

22. The rejection of claims 39-41 under 35 U.S.C. 112, second paragraph, as being indefinite, is withdrawn.

Rejections Maintained

23. The rejection of claims 31, 42 and 43 under 35 U.S.C. 112, second paragraph, as being indefinite for identity of encoded polypeptide, is maintained for reasons of record.

Applicants argue that the amendments of the claims obviate the rejection. The examiner has considered applicants' argument, in light of the claim amendments, but does not find it persuasive.

Claim 31 depends from claim 27 which is an isolated polynucleotide which "comprises" one of the nucleic acid sequences selected from the group consisting of SEQ ID NO:1 and 3. Because of the open language, the polynucleotide of claim 27 can have any number of residues on either end of SEQ ID NO:1 or 3. Thus, the claimed polypeptides encoded by the polynucleotide of claim 27 may still come from this unknown region and thus, the polypeptide identity remains unknown.

Conclusion

24. Claims 31, 42 and 43 are rejected.

25. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's Supervisor, Robert B. Mondesi (571)272-0956.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

December 10, 2008